

**TPS/Total Property Services of New England Inc.
and TPS/Total Property Services, Inc. and
United Brotherhood of Carpenters and Joiners
of America, Local 210.** Case 34-CA-4921

March 6, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS
DEVANEY AND OVIATT

Upon a charge and an amended charge filed by the Union on October 9, 1990, and May 6, 1991, respectively, the General Counsel of the National Labor Relations Board issued a complaint and an amended complaint on November 21, 1990, and July 30, 1991, respectively, against TPS/Total Property Services of New England Inc. and TPS/Total Property Services, Inc., the Respondents (New England and TPS, respectively), alleging that they have violated Section 8(a)(3) and (1) of the National Labor Relations Act. On December 11, 1990, New England filed an answer admitting in part and denying in part the allegations of the initial complaint and requesting that the complaint be dismissed. Although properly served copies of the amended charge and amended complaint, both New England and TPS failed to file an answer to the amended complaint.

On September 3, 1991, the General Counsel filed a Motion for Summary Judgment, with exhibits attached. On September 6, 1991, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In the Motion for Summary Judgment, the General Counsel contends that the Respondents have failed to

file an answer to the amended complaint and that, under Section 102.20 of the Board's Rules and Regulations,¹ the Board should find the allegations of that complaint to be true and issue an order based on those findings. The amended complaint includes all the allegations contained in the initial complaint and additionally alleges that New England and TPS constitute a single integrated business enterprise and a single employer.

We find summary judgment is not appropriate under the circumstances of this case. Most of the allegations contained in the amended complaint previously were alleged in the complaint, and previously were denied in the answer to the initial complaint filed by New England. Summary judgment is not proper based on a respondent's failure to answer an amended complaint's allegations that are substantively unchanged from allegations contained in a prior version of the complaint to which the respondent filed a proper denial. See *Caribe Cleaning Services*, 304 NLRB 932 fn. 2 (1991). Accordingly, we deny the General Counsel's Motion for Summary Judgment.²

ORDER

It is ordered that the General Counsel's Motion for Summary Judgment is denied.

IT IS FURTHER ORDERED that this proceeding is remanded to the Regional Director for Region 34 for further appropriate action.

¹Sec. 102.20 provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown.

²Because the alleged violations of TPS are derivative and stem from its alleged status as a single integrated business enterprise and a single employer with New England, the answer filed by New England precludes summary judgment against TPS. See *Caribe Cleaning Services*, supra at fn. 3.